

## Consultation & Habitat Conservation Planning

### Program Overview

The Consultation program is the primary customer service component of the Endangered Species program and makes an important contribution to the Service's "Biological Expertise to Others" (resource use) mission goal as well as the Service's "Conservation Leadership for Fish, Wildlife, and Their Habitats" (resource protection) mission goal. The Consultation program element includes two primary components, the Section 10 Habitat Conservation Planning program and the Section 7 Consultation program. The Service works with private landowners and local and state governments through the Habitat Conservation Planning program to develop Habitat Conservation Plans (HCPs) and their associated Incidental Take Permits. By working with non-federal entities to develop and implement HCPs, the Service identifies conservation measures to benefit species and habitats promoting the stabilization and improvement of endangered, threatened, and at-risk species. Through the Section 7 Consultation program the Service works with federal agencies and project applicants to ensure the activities they carry out, fund, or authorize are compatible with the conservation needs of listed species. The Service's Consultation program embodies "the Four C's," conservation through cooperation, consultation, and communication. Service personnel actively work with State and local partners to achieve common conservation goals.

The Service has proposed mission goals and associated long-term goals consistent with the Department's Strategic Plan. The Consultation program contributes directly to the Department's strategic goal to sustain biological communities on Department managed and influenced lands, in the Resource Protection mission component, and the Service's associated proposed mission goal of "Conservation Leadership for Fish, Wildlife, and Their Habitats." The Department's relevant end outcome measure is the percent of species listed a decade or more that are in stable or improving condition. In addition, the Consultation program contributes to the Department's Resource Use strategic goals, through the Service's proposed mission goal of "Biological Expertise to Others." Under this mission component, the Department's relevant end outcome goal is to manage or influence resource use to enhance public benefit and promote responsible use.

### Section 10(a)(1)(B) - Habitat Conservation Planning

Section 10(a)(1)(B) of the Endangered Species Act (ESA) provides for the permitting of the incidental take of threatened and endangered species. The Service's incidental take permit program is a flexible process for addressing situations in which a property owner's otherwise lawful activities might result in incidental take of a listed species. Using the best scientific information available, non-federal entities develop HCPs as part of the application requirements for an incidental take permit. The HCP program encourages applicants to explore different methods to achieve compliance with the ESA and choose an approach that best suits their needs while addressing ESA compliance. For instance, electrified fences surrounding many of the California Department of Corrections Facilities cause mortality to species as a result of contact with the fence. Concerned that a listed species would eventually encounter the fence, the Department of Corrections worked with the Service to incorporate measures surrounding the fence that minimizes the possibility of contact. The HCP developed by the State of California Corrections facilities continued on-going efforts to minimize impacts to 11 listed and sensitive species including the bald eagle, San Joaquin kit fox and desert tortoise while maintaining the ability to safeguard corrections facilities throughout California.

The HCP program's major strength is that it encourages locally developed solutions to wildlife conservation while providing certainty to permit holders. Local entities and private landowners are given assurances they will not be required to make additional commitments of land, water, or money,

or be subject to additional restrictions on the use of land, water, or other natural resources, for species adequately covered by a properly implemented HCP.

HCPs continue to increase in complexity, size, and number of species addressed. While the program has existed since 1983, it has grown in recent years with more than 40 million acres of land covered by HCPs at the end of fiscal year 2004, compared to about 6 million acres at the beginning of fiscal year 1999. HCP planning areas can be as small as a single, private residential property of less than an acre, or as large as entire counties or, in some cases, entire States. These large HCPs address a variety of activities including commercial, residential, and infrastructure development, and management activities associated with natural resource use and extraction. The creative and flexible nature of the HCP program provides solutions for all participants, from states to small landowners

Integration of the HCP process with local land-use planning occurs more frequently. Many local governments recognize the advantages of integrating planning needs and have taken the planning approach beyond just endangered species issues to comprehensively address environmental issues. As a result, these integrated, comprehensive planning efforts have become more complex and require a large amount of time and money to develop. However, in the long run, incorporating the HCP incidental take permit process into the more comprehensive local planning efforts saves local landowners time in obtaining permits for their projects. An excellent example of this coordination is the permit approved in June 2004 for Western Riverside County in southern California. This permit covers a wide variety of developmental activity in the 1.3 million acres of the planning area while providing for the conservation needs of 22 listed species and 87 non-listed species.

To foster landscape- and ecosystem-level approaches to planning, the Service encourages applicants for Section 10 permits to address multiple species, including proposed and candidate species as well as listed species, in their HCPs. Including candidate and at-risk species in their HCPs gives landowners and local governments the opportunity to take a more holistic approach to conservation and to minimize future conflicts. This type of regional planning benefits numerous species within an ecosystem and streamlines ESA compliance for the small landowners within the planning area. In addition, by covering candidate and at-risk species in an HCP, landowners can avoid potential future disruptions in project planning and implementation, should one or more of these covered, unlisted species be listed.

The rapid expansion of the HCP program in the last five years challenges our ability to provide the necessary technical assistance to applicants. Nearly 300 HCPs are currently under development or awaiting approval. In addition to participating and facilitating the development of large, multi-species plans, the Service provides technical assistance to small landowners who cannot afford to hire consultants or staff to provide biological expertise. While we place a high priority on large HCPs that cover many species and include many partners, we recognize the need to continue to provide technical assistance to small landowners as well.

Service involvement in the HCP process does not end once an HCP is approved. We often participate on HCP implementation steering committees, and provide additional technical support for managing and operating conservation programs. We also work with permittees to monitor compliance as well as process HCP amendments and renewal requests. In addition, we monitor HCPs to determine whether the mitigation strategies are effective and whether the anticipated effects are actually occurring, and assist permittees in implementing their adaptive management strategies.

Adaptive management is used by applicants and the Service to develop effective, flexible HCPs. Creating results-based HCPs rather than simply fulfilling a list of prescriptive actions that not only increases flexibility for the permittees, but promotes the desired biological outcomes. In addition, a results-oriented program (based on an adaptive management strategy) actually provides certainty to

the permittees by establishing the framework to modify the HCP when necessary. Results are periodically assessed, and, if shortcomings are evident, previously agreed-upon alternative strategies are implemented, thereby reducing conflict between the Service and permittees regarding ESA compliance.

### **Section 7 - Interagency Consultation**

Section 7 of the ESA requires federal agencies to use their authorities to further the purposes of the ESA, including an obligation to ensure that activities they authorize, fund, or carry out do not jeopardize the continued existence of listed species or destroy or adversely modify their designated critical habitat. For example, U.S. Forest Service (USFS) or Bureau of Land Management (BLM) approval of livestock grazing on federal lands, or the U.S. Army Corps of Engineers approval of discharge of fill material into waters of the U.S., requires Section 7 consultation when these activities may affect listed species.

Because Section 7 applies to actions federal agencies carry out, fund or authorize, non-federal applicants play a large role in the consultation process. Many of the federal actions subject to Section 7 consultation, such as grazing allotments or timber sales on federal lands and permits issued under the Clean Water Act, involve non-federal applicants. Section 7 of the ESA and its implementing regulations provide non-federal applicants a role in all phases of the interagency consultation process. A prospective applicant may request federal agencies to conduct early consultation to discover and attempt to resolve potential conflicts early in the planning stages of a project. The Service and the authorizing federal agencies rely on the participation of non-federal partners to develop methods for providing species protection consistent with their projects.

Coordination between the Service, other federal agencies, and their applicants during consultation is critical to ensure that the design of projects do not jeopardize listed species or destroy or adversely modify designated critical habitat. The Service works with the USFS, BLM, and a variety of local governments to implement hazardous fuels reduction projects to reduce the risk of catastrophic wildfires while ensuring these projects did not jeopardize endangered and threatened species. In some instances, these fuels reduction projects can have an overall benefit to listed species that are themselves vulnerable to catastrophic wildfire; the consultation process helps ensure these benefits are achieved while minimizing the possible immediate adverse impacts of the projects on listed species.

The Service actively encourages federal agencies and their applicants to informally consult as early as possible in the project planning process for the purpose of identifying and resolving endangered species conflicts while the project design is still flexible. The Service informally resolves the vast majority of consultations by working with the action agency and the applicant to avoid adverse effects to listed species or their designated critical habitat. Throughout the Section 7 process, the Service works with federal partners and their applicants to develop alternatives or project modifications, where necessary, that accomplishes the purpose of the action while avoiding adverse effects. During consultation with federal agencies it is essential to coordinate and work closely with affected states and tribes, sharing information and seeking solutions to common problems. Although early coordination increases our workload at the beginning of a consultation, it is the key to avoiding costly delays during the consultation process and minimizing the potential for conflicts later.

There are times, however, that an action, as proposed, simply cannot be implemented without adversely affecting a listed species or its designated critical habitat. Formal consultation is required in these cases. During formal consultation, the Service, the action agency, and the applicant work closely to identify and minimize the effects of the project to listed species and their habitats. The Service then develops a biological opinion that:

## ENDANGERED SPECIES

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- Worked with the USFS, BLM, National Park Service (NPS), Bureau of Indian Affairs (BIA), and the National Marine Fisheries Service (NMFS) to finalize counterpart regulations for completing section 7 consultations on hazardous fuels reduction projects under the National Fire Plan.
- Worked with EPA to propose and finalize counterpart regulations for completing section 7 consultations on EPA registration decisions under the *Federal Insecticide, Fungicide, and Rodenticide Act*.
- As part of a multi-year effort, continued development of protocols to assess the effects to listed species of establishing aquatic life criteria used by states and tribes to establish water quality standards.
- Provided continued assistance to federal agencies on a wide array of water projects such as the interior Columbia River basin, middle Rio Grande River, Pecos River, San Juan River, San Francisco Bay-Delta, Platte River, and Colorado River.
- Worked with the Corps of Engineers to complete consultation on its Annual Operation Plan and reinitiated consultation for its ongoing operations of the Missouri River Master Manual.
- Continued to support development of approximately 20 regional HCPs under development in California, Nevada, Arizona, Texas, and Hawaii. These HCPs represent the continued high level of collaborative planning among local, state, and federal governments, and the private sector. In southern California alone, these HCPs, among others, will address the needs of more than 17 million people and nearly 100 federally listed species in four of the fastest growing areas in the nation.
- Worked with the Office of Surface Mining to deliver two more sessions of a training program to Service, OSM, and State employees regarding the integration of section 7 consultation with the *Surface Mining Control and Reclamation Act*.

### 2005 Planned Program Performance

The Service was appropriated \$48,129,000 for the Consultation and HCP programs for FY 2005. Projected accomplishments include:

- Provide technical assistance to customers that will result in the approval of about 30 HCPs in 2005, to increase the number of acres covered by HCPs to approximately 42 million acres, and to increase the number of listed and non-listed species covered by HCPs to more than 600. In addition, we expect to be involved in the development of approximately 300 HCPs covering approximately 30 million acres.
- Continue to work with all our federal customers to design projects that will not have adverse impacts on listed species. Based on past years' consultations, we expect to conduct approximately 77,000 consultations, including approximately 1,300 formal consultations and 30 programmatic consultations.
- Begin assisting EPA's Office of Pesticide Programs with registration and re-registration decisions for 10-15 pesticide products using the procedures in the new counterpart regulations (50 CFR 402, subpart D).

- As part of a multi-year effort, complete formal consultations with EPA on approximately 10 aquatic life criteria used by states and tribes to establish water quality standards.
- Complete consultation with the Animal and Plant Health Inspection Service on their animal damage control program.
- Conduct 2-3 additional training sessions for EPA's Office of Pesticide Programs to increase the number of staff qualified to use the authority to make "not likely to adversely affect" determinations without obtaining concurrence from the Service.
- In cooperation with the BLM and the USFS, conduct a review of the first year of implementation of the counterpart regulations for completing consultations on hazardous fuels reduction projects carried out by Federal agencies under the National Fire Plan.

### Justification of 2006 Program Changes

Subactivity	2006 Budget Request	Program Changes (+/-)
Consultation & Habitat Conservation Planning		
\$(000)	49,484	+269
FTE	480	-

The FY 2006 budget request for Consultation & Habitat Conservation and Planning is \$49,484,000 and 480 FTE, a program increase of \$269,000 from the 2005 enacted level and the same FTE level as 2005. Additional funds for the Consultation Program element are available through reimbursable agreements with the USFS and BLM; these funds must be used only for consulting on National Fire Plan projects. In FY 2005, the Service expects to be reimbursed for about \$2,000,000 by the BLM and about \$3,000,000 by the USFS; in FY 2006, these total are expected to remain stable.

### General Consultation (+\$1,160,000)

\$350,000 of the proposed increase will support Service staff in the provision of direct assistance to EPA's Office of Pesticide Programs in evaluating the effects of pesticides on listed species and critical habitat. Based on a preliminary evaluation of existing information for pesticides scheduled for re-registration and registration review decisions in the coming years, it is reasonable to assume that 10-15 compounds per year will require in-depth analyses to support sound effects determinations. Registration review actions beginning in FY 2006 with re-registration analyses and decisions continuing through FY 2008. During this period of time, it is anticipated approximately five pesticides per year may require extensive analyses to reach sound effects determinations as a result of on-going litigation. These preliminary estimates and scoping exercises were provided by EPA's Office of Pesticide Programs and indicate the potential need for collaboration with the Service as described in the final counterpart regulations for pesticide registration actions that were established in FY 2004. The remaining \$810,000 will be used to provide additional technical support for development and approval of Habitat Conservation Plans. The Service has significant demand for HCPs in several areas. Example projects that would be supported by the proposed increase include numerous small landowner HCPs affecting the Perdido Key beach mouse in Florida and the Alabama beach mouse in Alabama. Other HCPs likely to be in development in FY 2006 that will require additional attention beyond our current capabilities include an HCP covering the Topeka shiner and road construction/maintenance in southwestern Minnesota, an HCP for southwestern willow flycatchers in the San Luis Valley of Colorado, and a particularly complex HCP covering the Edwards' Aquifer in Texas.

**Forest Plan (+\$63,000); Everglades (+\$14,000); Pacific Northwest Salmon (+\$22,000)**

The fiscal year 2005 Omnibus Appropriations Act (P.L. 108-447) included two across the board rescissions, netting a 1.3 percent reduction to all Service programs. These increases will restore funding to the 2004 enacted level and will allow the Service to maintain performance and base program capability. The Northwest Forest Plan, initiated in 1994, is a comprehensive Federal effort to resolve forest practices in the Pacific Northwest. The Forest Plan includes a large-scale 100-year forest management plan covering 24 million acres of federal lands, and approaches for addressing related forest resource issues on 30 million acres of non-federal lands. The Service has funded the Comprehensive Everglades Restoration Plan (CERP) which is a cooperative effort with the Corps and other interagency partners. The Service provides technical assistance and needed expertise during the planning, design, construction and adaptive assessment of this unprecedented restoration program. The Service is integrally involved in providing staff and assistance to meet several Congressional mandates contained in the *Water Resources Development Act of 2000*. The Pacific Northwest Salmon project will further the recovery of the bull trout and Kootenai white sturgeon in the Columbia River Basin.

**Natural Communities Conservation Planning (-\$986,000)**

Federal financial support for participation in the NCCP program has been an important component of the collaborative partnership among local, state, and federal governments and the private sector to address the conservation of listed species in southern California. This direct financial assistance began prior to Section 6 funding being made available to provide similar financial assistance for planning efforts elsewhere in the country. Habitat conservation planning is now well underway in southern California and the Section 6 HCP Planning Grants program is available to provide financial assistance.

The proposed decrease will eliminate the funding targeted for support of the local jurisdictions seeking to engage in Natural Communities Conservation Planning process in southern California. These local jurisdictions are eligible to compete for Section 6 HCP Planning Grant funds together with other applicants nationwide.

**Vehicle Reduction (-\$4,000)**

The 2006 budget proposes a reduction of \$4,000 in the Endangered Species Consultation program to recognize expected savings to be achieved through improved fleet management within the Service and across the Department of Interior.